

PROPOSITION 54

**SUBJECT TO COURT
ORDERED CHANGES**

~~PROPOSITION 54~~

~~Date: July 25, 2003~~

~~Classification by Race,~~

~~Ethnicity, Color, or National Origin~~

~~Initiative Constitutional Amendment.~~

~~Proposed by Kevin Nguyen~~

OFFICIAL TITLE AND SUMMARY
PREPARED BY THE ATTORNEY GENERAL

BALLOT TITLE AND SUMMARY

CLASSIFICATION BY RACE, ETHNICITY, COLOR, OR NATIONAL ORIGIN. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Amends Constitution to prohibit state and local governments from using race, ethnicity, color, or national origin to classify current or prospective students, contractors or employees in public education, contracting, or employment operations. Does not prohibit classification by sex.
- Prohibition also covers persons subject to other operations of government unless Legislature finds compelling state interest, authorizes by two-thirds of each house, and Governor approves.
- "Classifying" defined as separating, sorting, or organizing persons or personal data. Exemptions include: law enforcement descriptions; prisoner and undercover assignments; actions taken to maintain federal funding.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- The measure would not result in a significant fiscal impact on state and local governments.

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Classification by Race, Ethnicity, Color, or National Origin.
Initiative Constitutional Amendment

Background

The state and local governments collect information on race, color, ethnicity, or national origin of their employees and other individuals for various purposes. In most cases, the federal government requires this information to ensure compliance with federal nondiscrimination laws (particularly equal employment opportunity laws) and as a condition of receiving various federal funds. For example, state and local government agencies collect race-related information on adopted children and include this information in reports required by the federal government. In some cases, however, state and local agencies collect this type of information when not required by the federal government. For instance, state government collects race-related information on students applying to state universities for admission (whether or not they eventually enroll).

The California Constitution currently allows the collection and use of race-related information. In the areas of public employment, public education, and public contracting, the Constitution, however, prohibits state and local governments from providing "preferential treatment" based on race, color, ethnicity, or national origin.

Proposal

This measure restricts, effective January 1, 2005, state and local governments from "classifying" information on a person's race, ethnicity, color, or national origin for the purposes of public education, public contracting, public employment, and other government operations. "Classifying" would include the *collection* by a governmental entity of an individual's race-related information. It would also affect to an unknown extent (as discussed below) the *use* of race-related information by governmental entities. In our discussion, we use the phrase "collection and use" in place of the measure's term "classifying."

Exemptions. The collection and use of race-related information by state and local governments would be prohibited unless specifically exempted. The measure allows the continued collection and use of race-related data for a variety of reasons, including:

- To comply with federal law.
- To remain eligible to receive money from the federal government.
- To comply with a court order in force as of the effective date of the measure.
- To allow law enforcement agencies to describe individuals.

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To place prisoners and assign undercover law enforcement officers.

To collect and use information related to medical research subjects and patients.

- To allow the Department of Fair Employment and Housing (DFEH) to collect certain race-related information through 2014.

In addition, for those government operations unrelated to public education, public contracting, and public employment, the measure allows the Legislature to pass (by a two-thirds vote of each house) and the Governor to sign, legislation approving the collection and use of such data to serve a "compelling state interest."

Programmatic Effects

Information Collected for Most Programs Would Continue

Much of the race-related information collected by state and local government agencies could continue to be collected under the measure's exemptions. The majority of this information is currently required by the federal government. For example:

Government agencies collect race-related information on job applicants and employees to meet federal equal employment opportunity requirements.

Public schools (kindergarten through grade 12) collect race-related information on students. The federal government requires most of this information to monitor and evaluate (1) specific educational programs and (2) student test results and achievements.

The University of California (UC), California State University (CSU), and California Community Colleges collect race-related information on enrolled students and employees to meet federal funding requirements.

- State and local government agencies collect race-related information on individuals who receive services related to cash assistance, alcohol and drug treatment, mental health, and food stamps. Most of this information is required by the federal government.
- Law enforcement agencies collect and compile race-related information to meet various federal requirements.

The DFEH enforces the state's equal opportunity laws. Many of the department's race-related activities are required by the federal government. To the extent that DFEH's race-related activities are not required by the federal government, the measure allows DFEH to continue this work through 2014 (at which time the Legislature could vote to continue these activities).

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Information Collected for Some Programs Would Be Restricted

State and local government agencies also collect and use race-related information independently of federal requirements. To the extent these activities are not covered by the measure's other exemptions, this information could no longer be collected. For instance, agencies could no longer collect race-related information associated with:

- Companies doing business with the state.
- Public school students participating in a limited number of specific state education programs and tests.

Prospective UC and CSU students.

- High school students participating in some UC educational outreach programs.
- College students participating in the state's loan forgiveness program.
- Students taking state teacher credentialing exams.

In those areas where agencies were restricted in their activities, state and local governments would have reduced race-related information. In such cases, the measure could have some impact on future public policy decisions.

Effects on Some Programs Uncertain

For some current government activities, the effect of the measure is unknown and would depend on future interpretation of the measure's language by courts and future actions by the Legislature. For instance, the federal government compiles demographic information on the state's population (primarily through the Census). This information generally is aggregated—that is, not tied to specific individuals. Many state and local agencies then use this information for a variety of purposes. It is unclear under the measure whether state and local agencies could continue to use the race-related components of this information for evaluation, program, and reporting purposes.

Under the measure, state and local agencies could continue to collect race-related information to meet federal requirements. The measure, however, is not clear whether these entities could then continue to sort and analyze the information for other purposes.

In the area of law enforcement, the measure allows officers to describe individuals by race-related classifications (such as during a search for a criminal suspect). It is unclear if the measure also would allow law enforcement agencies to then use the information in other ways—such as analyzing crime trends by race.

In addition, the state and local agencies collect a variety of public health information through the use of surveys of the public which may include race-related information. It appears that this activity could continue under the measure's medical research

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exception. Future court and/or legislative actions could affect the measure's implementation in this regard.

Fiscal Effects

Much of the race-related information currently assembled and used by state and local governments could continue to be collected under the measure. In some instances, the continued collection of information would depend on federal program and funding decisions. With regards to information which no longer could be collected under the measure, state and local governments could experience minor one-time costs to modify forms and data collection systems. These agencies could also experience minor annual savings due to the reduced collection and use of race-related information. On balance, the measure would not result in a significant fiscal impact on state and local governments.

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~~Argument For Proposition 54~~

"What is your race?"

African-American? Mexican-American? Asian-American? White? Native-American? Or, the mysterious "Other?"

If you're like most Californians, you're getting tired of that question.

Californians are the most racially and ethnically diverse people in the world-and we are proud of it. We are also among the most independent; and we resent being classified, categorized, divided and subdivided based on our skin color and the origin of our ancestors.

When you're asked to check a government form with row after row of these rigid and silly little "race" boxes, have you ever just wanted to say, "None of your business; now leave me alone"? Proposition 54 seeks to eliminate racial categorization, by the government, in all areas except medicine, health care and law enforcement.

The advocates of racial categorization maintain that you have no right to privacy concerning your ancestry and racial background. They see no problem if your employer or school officials label you AGAINST YOUR WILL—often without even telling you—or charge you with "racial fraud" if their "racial" definitions are different from yours.

Dare we forget the lessons of history?

Classification systems were invented to keep certain groups "in their place" and to deny them full rights. These schemes were not invented by the Civil Rights movement! They are anathema to it. In fact, former Supreme Court Justice Thurgood Marshall once said, "Distinctions by race are so evil, so arbitrary and invidious that a state bound to defend the equal protection of the laws must not involve

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them in any public sphere."

ARGUMENT IN FAVOR OF PROPOSITION **54**

Throughout history, government-imposed racial classifications have been used to divide people. They have been used to set people against each other. The slave owners and segregationists of the American past knew it; the Nazis knew it when they labeled European Jews a separate and inferior "race"; American judges knew it when they had to determine if Asians or part-Asians were white or non-white for the purposes of naturalization. Now, the advocates of racial categorization tell us that government-imposed racial categories will somehow yield the very opposite of what they were originally intended to do! They insult our intelligence!

The unrelenting, daily racial categorization of people by the government is one of the most divisive forces in American society. It is constantly emphasizing our minor differences, in opposition to our better instincts that tell us to seek our common interests and common values.

It's time for a change!

The government should stop categorizing its citizens by color and ancestry, and create a society in which our children and grandchildren can just think of themselves as Americans and individuals.

The colorblind ideal—judging others by the content of their character rather than the color of their skin—is more than a dream in California; it is central to the definition of who we are as a people, because, in California, we don't just dream; we **do** what others dream of doing.

Vote "YES" on Proposition 54 (www.racialprivacy.org)!

Ward Connerly
University of California Regent

Martha Montelongo Myers
Columnist

Joe Hicks
Human Relations Consultant

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REBUTTAL TO ARGUMENT IN FAVOR OF

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~~Rebuttal Against Proponents Argument on Proposition 54 Final~~

We all want a color-blind society. But we also want health care we can count on. The way Proposition 54 is written, it takes away information your doctor needs to fight the spread of disease and prevent illness.

Health information banned by Proposition 54 is currently used to fight cancer, heart disease, diabetes, the spread of infectious diseases, and other illnesses that affect all Californians in every part of the State.

Supporters of Proposition 54 claim that there is an exemption for “medical research subjects and patients.” But, there are dozens of ways we collect important health data not covered by this “exemption.” Data banned by Proposition 54 includes information from death and birth certificates, hospital and laboratory reports, and disease tracking tools such as the cancer registry. Eliminating information will make it harder to stop preventable disease outbreaks, premature death, and disability.

That is why the California Medical Association, the American Heart Association, Breast Cancer Action, the California Primary Care Association, California Healthcare Association, the California Association of Family Physicians and 40 other leading health authorities oppose Proposition 54.

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REBUTTAL TO ARGUMENT IN FAVOR OF
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This initiative will not lead to a color-blind society, but it will endanger the health of every Californian. Proposition 54 will make it unconstitutional to use information to save lives.

Who do you trust for information about your health? The American Academy of Pediatrics or the paid political professionals who are selling this initiative?

Vote No on Proposition 54. It is bad for our State, bad for our health.

(www.informedcalifornia.org)

Jacqueline Jacobberger

President, League of Women Voters

John C. Lewin, M.D.

Chief Executive Officer, California Medical Association

Molly Coye, M.D.,

Former Director, Department of Health Services, Wilson Administration

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~~Arguments Against Prop 54 - Final Draft~~

Proposition 54 is bad for health care, bad for public safety and bad for education. To understand why, you have to read the words of the initiative closely. It begins by banning the gathering of information “by race, ethnicity, color or national origin in the operation of public education, public contracting or public employment.” Then it expands the ban to “any other state operations.” The ban on gathering information is broad. It includes “separating, sorting or organizing data by race, ethnicity, color or national origin.” Amending the Constitution is a serious step that should not be taken lightly

It doesn't make sense to ban information. The data is used for very important purposes

We use this information to identify groups at risk for infectious disease. If there is an outbreak of disease in one group, we have to be able to identify and contain it before it spreads to the general population

The so-called “medical exemption” only allows doctors to keep racial or ethnic data on their patients, but it does not allow us to use population data to prevent diseases. The California Academy of Family Physicians, the American Academy of Pediatrics, California Healthcare Association and the California Association of Public Hospitals all oppose Proposition 54

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- The data tell us that white women are diagnosed with breast cancer at a higher rate. Asian Americans are at higher risk for Hepatitis-B. Latinos are more likely to die from complications of diabetes. African Americans die from heart disease at a higher rate. This information saves lives. The American Heart Association, Breast Cancer Action, the Latino Coalition for a Healthy California and some 40 other health organizations oppose this initiative.

The exemption for law enforcement is poorly written. According to the Attorney General, the initiative will hurt efforts to prevent “Hate Crimes.” Under Proposition 54, the State Department of Justice could no longer require local police to collect data on victims and suspects. That data can help solve crimes. Law enforcement groups, the Anti-Defamation League, and the Asian Law Alliance oppose proposition 54.

- The California Public School Accountability Act is designed to make sure that children reach standards of learning regardless of race or ethnicity. Proposition 54 reduces accountability in our schools by letting school administrators off the hook when they fail to close the achievement gap. The California State PTA, the California Teachers Association, the California Federation of Teachers, the University of California and State Superintendent of Schools Jack O’Connell all oppose this initiative.

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- It is already against the law in California to give preferential treatment in jobs, contracting and college admissions based on race or ethnicity. We all want to live in a color-blind society. But we won't get there by banning information.

Proposition 54 was rushed onto the ballot. This Constitutional amendment is poorly written and threatens our health, safety and education.

We urge you to vote NO on Proposition 54.

Jacqueline Jacobberger

President, League of Women Voters of California

John C. Lewin, M.D.

Chief Executive Officer, California Medical Association

Robert M. Pearl, M.D.

Kaiser Permanente

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Proposition 54 states plainly and unconditionally that:

"Medical research subjects and patients shall be exempt [from the initiative]."

In addition, the independent California Legislative Analyst's Office asserts that

.state and local agencies collect a variety of public health information through the use of surveys of the public which may include race-related information. It appears that this activity could continue under the measure's medical research exception."

This interpretation is exactly what the proponents of Proposition 54 intended.

Why are proponents of racial categorization so desperate to preserve this idiotic practice of dividing us by skin color and last names that they would misrepresent the initiative in an attempt to scare voters? And, if they deceive about something as simple as this, can you believe anything they say?

The American people are so "mixed" that our lives may actually be put at risk by attempts to match health care and medicines with race. According to world-renowned geneticists Susanne Haga and J. Craig Venter, "applying antiquated [race] labels to the interpretation of scientific data could result in misleading and biologically meaningless conclusions...greater genetic variation exists within groups than among them.

Proponents of racial categorization say they want a colorblind society, but then they fabricate every obstacle imaginable to prevent us from getting there

Proposition 54 was carefully drafted by some of the best legal minds in the country to demand that government begin to see us as Americans, not as a bunch of hyphenated "races."

Please **VOTE YES ON PROPOSITION 54!**

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Sam Aanestad
State Senator

Dr MaryRose Consiglio
Prop 54 Statewide Vice Chair

Roger Hedgecock
Talk Show Host KOGO San Diego

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Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT OF ARTICLE I

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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS
The Attorney General of California has prepared the following title and summary of the chief purposes and points of the proposed measure.

[Insert 500 word Title and Summary Prepared by Attorney General]

To the Honorable Secretary of State:

We the undersigned, registered, qualified voters of California residents of afore-described County (or City and County), hereby propose amendments to Article I of the Constitution of California relating to racial classifications and petition the Secretary of State to submit same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed constitutional amendments read as follows:

Prohibition Against Classifying by Race by State and Other Public Entities []
Section 32 is added to Article I of the California Constitution, as follows:

¶ Sec. 32. (a) The state shall not classify any individual by race, ethnicity, color, or national origin in the operation of public education, public contracting, or public employment. *to read*

(b) The state shall not classify any individual by race, ethnicity, color, or national origin in the operation of any other state operations, unless the legislature specifically determines that said classification serves a compelling state interest and approves said classification by a ~~2/3~~ *two-thirds* majority in both houses of the legislature, and said classification is subsequently approved by the governor.

(c) For purposes of this section, "classifying" by race, ethnicity, color, or national origin shall be defined as the act of separating, sorting, or organizing by race, ethnicity, color, or national origin including, but not limited to, inquiring, profiling, or collecting such data on government forms. *subdivision* *ital*

(d) For purposes of ~~subsection~~ *subdivision* (a), "individual" refers to current or prospective students, contractors, or employees. For purposes of ~~subsection~~ *subdivision* (b), "individual" refers to persons subject to the state operations referred to in ~~subsection~~ *subdivision* (b).

(e) The Department of Fair Employment and Housing (DFEH) shall be exempt from this section with respect to DFEH-conducted classifications in place as of March 5, 2002.

(1) Unless specifically extended by the legislature, this exemption shall expire ~~ten~~ *10* years after the effective date of this measure.

(2) Notwithstanding DFEH's exemption from this section, DFEH shall not impute a race, color, ethnicity, or national origin to any individual.

(f) Otherwise lawful classification of medical research subjects and patients shall be exempt from this section.

¶ SECTION 1.

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(g) Nothing in this section shall prevent law enforcement officers, while carrying out their law enforcement duties, from describing particular persons in otherwise lawful ways. Neither the governor, the legislature, nor any statewide agency shall require law enforcement officers to maintain records that track individuals on the basis of said classifications, nor shall the governor, the legislature, or any statewide agency withhold funding to law enforcement agencies on the basis of the failure to maintain such records.

(h) Otherwise lawful assignment of prisoners and undercover law enforcement officers shall be exempt from this section.

(i) Nothing in this section shall be interpreted as prohibiting action which must be taken to comply with federal law, or establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the state.

(j) Nothing in this section shall be interpreted as invalidating any valid consent decree or court order which is in force as of the effective date of this section.

(k) For the purposes of this section, "state" shall include, but not necessarily be limited to, the state itself, any city, county, city and county, public university system, including the University of California, California State University, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(l) This section shall become effective January 1, 2005.

(m) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

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